

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
LUIS CHIMBAY GONZALEZ, 2020060029,

For Online Publication Only

Plaintiff,

-against-

JAMES DZURENDA, Sheriff Warden; SGT. KLEIN, Sgt.;
JOHN DOES 1-4, Corrections Emergency Response Team;

Defendants.
-----X

AZRACK, District Judge:

ORDER
21-CV-04482(JMA)(ST)

**FILED
CLERK**

7:14 pm, Nov 04, 2021

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

Before the Court is the civil rights complaint filed pursuant to 42 U.S.C. 1983 by incarcerated pro se plaintiff Luis Chimbay Gonzalez (“plaintiff”) against the warden of the Nassau County Correctional Center, James Dzurenda (“Dzurenda”), Sgt. Klein, and four unidentified individuals who are alleged to be on the Corrections Emergency Response Team (“John Does”). (See ECF No.1.) Plaintiff did not remit the filing fee or move for in forma pauperis status at the time he filed the complaint. Accordingly, by Notice of Deficiency dated August 16, 2021, plaintiff was instructed to either remit the filing fee or to complete and return the enclosed in forma pauperis application and Prisoner Litigation Authorization form (“PLRA”) within fourteen days. (See ECF No. 2.) On August 30, 2021, plaintiff filed an in forma pauperis application but did not file the PLRA. (See ECF No. 6.) Accordingly, the Court sent plaintiff a second Notice of Deficiency. (See ECF No. 7.) On September 13, 2021, plaintiff filed the PLRA. (See ECF No. 9.)

Upon review of the declarations accompanying plaintiff’s application to proceed in forma pauperis, the Court finds that plaintiff’s financial status qualifies him to commence this action without prepayment of the filing fee. See 28 U.S.C. § 1915(a)(1). Accordingly, the Court grants

plaintiff's application to proceed in forma pauperis and orders service of the summonses and complaint upon the defendants by the United States Marshal Service ("USMS"). However, the USMS will not be able to serve the unidentified defendants without more information.

Pursuant to Valentin v. Dinkins, 121 F.3d 72, 75-76 (2d Cir. 1997) (per curiam), the Nassau County attorney is requested to assist with identifying the unnamed defendants who are alleged to be to be employed as CERT corrections officers working at the Nassau County Correctional Center as is alleged in the complaint. Accordingly, the Clerk of the Court shall serve a copy of the complaint together with this order on the Nassau County Attorney and the Nassau County Attorney's Office is requested to attempt to ascertain the full names of the unidentified defendants and to provide their names and the address(es) where such defendants can be served to the Court and to plaintiff within thirty (30) days of the date that this Order is served upon it.

The Nassau County Attorney need not undertake to defend or indemnify these individuals at this juncture. This Order merely provides a means by which the plaintiff may name and properly serve the defendants as instructed by the Second Circuit in Valentin. Once the information is provided to the Court by the Nassau County Attorney's Office, plaintiff's complaint shall be deemed amended to reflect the full names of the unnamed defendants, a summons shall be issued to each defendant, and the USMS shall effect service.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

The Clerk of Court shall mail a copy of this Order to the plaintiff at his last known address.

SO ORDERED.

Dated: November 4, 2021
Central Islip, New York

/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE